

AMENDED IN SENATE MAY 12, 2011

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 540

Introduced by Senator Price

February 17, 2011

An act to amend Sections 651, 1602, 1603, 1628.7, 1632, ~~1695~~, 1695.5, 1725, 1752.3, 1753.4, and 1973 of, to add Section 1611.3 to, to repeal and amend Sections 1601.1 and 1616.5 of, and to repeal and add Section 1742 of, the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as amended, Price. Dentistry.

Existing law, until January 1, 2012, provides for the Dental Board of California within the Department of Consumer Affairs. Existing law requires the membership of the board to consist of 8 practicing dentists, a registered dental hygienist, a registered dental assistant, and 4 public members. Existing law requires the Governor to appoint all of the members of the board, except that the Senate Committee on Rules and the Speaker of the Assembly each appoint a public member. Existing law, until January 1, 2012, allows the board, with the approval of the Director of Consumer Affairs, to appoint a person exempt from civil service as the executive officer of the board. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, 2016, and instead specify that the board would be subject to review

by the appropriate policy committees of the Legislature. The bill would change the membership of the board to delete the dental hygienist member and the dental assistant member and add 3 additional public members to the board to be appointed by the Governor. The bill would make technical, conforming changes to related provisions. The bill would also create a Dental Assisting Council of the board to consider matters relating to dental assistants and make recommendations to the board, as specified.

Existing law makes it unlawful for a healing arts practitioner to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. Existing law prohibits a dentist from making certain advertisements or holding himself or herself out as a specialist unless he or she meets specified criteria.

This bill would delete the advertising prohibitions described above that apply only to dentists.

Existing law requires every board in the Department of Consumer Affairs to initiate the process of adopting regulations on or before June 30, 1999, to require its licensees to provide notice to their clients or customers that the practitioner is licensed in this state, except as specified.

This bill would require the board to comply with that provision by January 1, 2013, and would set forth requirements for the notice to be adopted by the board.

Existing law authorizes the board to, upon an applicant's successful completion of the board examination, issue a probationary license to an applicant for licensure as a dentist or dental auxiliary. Existing law authorizes the board to require the applicant to comply with specified terms or conditions of a probationary license.

This bill would require the board to adopt written guidelines on how to make probation assignments and to ensure that probationary and evaluation reports are conducted consistently and regularly.

Existing law requires an applicant for licensure as a dentist to successfully complete an examination in California law and ethics developed and administered by the board.

This bill would require the board to ensure that the law and ethics examination reflects current law and regulations and that the examinations are randomized.

Existing law requires the board to establish criteria for the acceptance, denial, or termination of licentiates in a diversion program for the rehabilitation of licensees.

~~This bill would require the Bureau of State Audits to audit the diversion program of the board, upon a specified request by the Legislature, to be funded by moneys from the State Dentistry Fund. The bill would also make changes to the provisions that apply to a licensee who withdraws or terminates from the diversion program. The bill would provide that all diversion records for that licensee shall be provided to the board's enforcement program and may be used in any disciplinary proceeding, including if the licensee tests positive for banned substances, as specified.~~

Existing law provides that the amount of the fees under the Dental Practice Act that relate to the licensing and permitting of dental assistants shall be established by resolution.

This bill would instead require those fees to be established by regulation.

Existing law requires the board to extend the California Dental Corps Loan Repayment Program of 2002 and distribute the money remaining in the account only until a specified date.

This bill would instead require the moneys to be distributed until all of the moneys are expended.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 651 of the Business and Professions Code
2 is amended to read:
3 651. (a) It is unlawful for any person licensed under this
4 division or under any initiative act referred to in this division to
5 disseminate or cause to be disseminated any form of public
6 communication containing a false, fraudulent, misleading, or
7 deceptive statement, claim, or image for the purpose of or likely
8 to induce, directly or indirectly, the rendering of professional
9 services or furnishing of products in connection with the
10 professional practice or business for which he or she is licensed.

1 A “public communication” as used in this section includes, but is
2 not limited to, communication by means of mail, television, radio,
3 motion picture, newspaper, book, list or directory of healing arts
4 practitioners, Internet, or other electronic communication.

5 (b) A false, fraudulent, misleading, or deceptive statement,
6 claim, or image includes a statement or claim that does any of the
7 following:

8 (1) Contains a misrepresentation of fact.

9 (2) Is likely to mislead or deceive because of a failure to disclose
10 material facts.

11 (3) (A) Is intended or is likely to create false or unjustified
12 expectations of favorable results, including the use of any
13 photograph or other image that does not accurately depict the
14 results of the procedure being advertised or that has been altered
15 in any manner from the image of the actual subject depicted in the
16 photograph or image.

17 (B) Use of any photograph or other image of a model without
18 clearly stating in a prominent location in easily readable type the
19 fact that the photograph or image is of a model is a violation of
20 subdivision (a). For purposes of this paragraph, a model is anyone
21 other than an actual patient, who has undergone the procedure
22 being advertised, of the licensee who is advertising for his or her
23 services.

24 (C) Use of any photograph or other image of an actual patient
25 that depicts or purports to depict the results of any procedure, or
26 presents “before” and “after” views of a patient, without specifying
27 in a prominent location in easily readable type size what procedures
28 were performed on that patient is a violation of subdivision (a).
29 Any “before” and “after” views (i) shall be comparable in
30 presentation so that the results are not distorted by favorable poses,
31 lighting, or other features of presentation, and (ii) shall contain a
32 statement that the same “before” and “after” results may not occur
33 for all patients.

34 (4) Relates to fees, other than a standard consultation fee or a
35 range of fees for specific types of services, without fully and
36 specifically disclosing all variables and other material factors.

37 (5) Contains other representations or implications that in
38 reasonable probability will cause an ordinarily prudent person to
39 misunderstand or be deceived.

1 (6) Makes a claim either of professional superiority or of
2 performing services in a superior manner, unless that claim is
3 relevant to the service being performed and can be substantiated
4 with objective scientific evidence.

5 (7) Makes a scientific claim that cannot be substantiated by
6 reliable, peer reviewed, published scientific studies.

7 (8) Includes any statement, endorsement, or testimonial that is
8 likely to mislead or deceive because of a failure to disclose material
9 facts.

10 (c) Any price advertisement shall be exact, without the use of
11 phrases, including, but not limited to, “as low as,” “and up,”
12 “lowest prices,” or words or phrases of similar import. Any
13 advertisement that refers to services, or costs for services, and that
14 uses words of comparison shall be based on verifiable data
15 substantiating the comparison. Any person so advertising shall be
16 prepared to provide information sufficient to establish the accuracy
17 of that comparison. Price advertising shall not be fraudulent,
18 deceitful, or misleading, including statements or advertisements
19 of bait, discount, premiums, gifts, or any statements of a similar
20 nature. In connection with price advertising, the price for each
21 product or service shall be clearly identifiable. The price advertised
22 for products shall include charges for any related professional
23 services, including dispensing and fitting services, unless the
24 advertisement specifically and clearly indicates otherwise.

25 (d) Any person so licensed shall not compensate or give anything
26 of value to a representative of the press, radio, television, or other
27 communication medium in anticipation of, or in return for,
28 professional publicity unless the fact of compensation is made
29 known in that publicity.

30 (e) Any person so licensed may not use any professional card,
31 professional announcement card, office sign, letterhead, telephone
32 directory listing, medical list, medical directory listing, or a similar
33 professional notice or device if it includes a statement or claim
34 that is false, fraudulent, misleading, or deceptive within the
35 meaning of subdivision (b).

36 (f) Any person so licensed who violates this section is guilty of
37 a misdemeanor. A bona fide mistake of fact shall be a defense to
38 this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(B) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(C) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board

certified” in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” unless the full name of the certifying board is also used and given comparable prominence with the term “board certified” in the statement.

For purposes of this subparagraph, a “multidisciplinary board or association” means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant’s education, training, and experience.

For purposes of the term “board certified,” as used in this subparagraph, the terms “board” and “association” mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon’s licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(D) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or

1 association with equivalent requirements approved by the
2 California Board of Podiatric Medicine, or (iii) is a board or
3 association with the Council on Podiatric Medical Education
4 approved postgraduate training programs that provide training in
5 podiatric medicine and podiatric surgery. A doctor of podiatric
6 medicine licensed under Chapter 5 (commencing with Section
7 2000) by the Medical Board of California who is certified by a
8 board or association referred to in clause (i), (ii), or (iii) shall not
9 use the term “board certified” unless the full name of the certifying
10 board is also used and given comparable prominence with the term
11 “board certified” in the statement. A doctor of podiatric medicine
12 licensed under Chapter 5 (commencing with Section 2000) by the
13 Medical Board of California who is certified by an organization
14 other than a board or association referred to in clause (i), (ii), or
15 (iii) shall not use the term “board certified” in reference to that
16 certification.

17 For purposes of this subparagraph, a “multidisciplinary board
18 or association” means an educational certifying body that has a
19 psychometrically valid testing process, as determined by the
20 California Board of Podiatric Medicine, for certifying doctors of
21 podiatric medicine that is based on the applicant’s education,
22 training, and experience. For purposes of the term “board certified,”
23 as used in this subparagraph, the terms “board” and “association”
24 mean an organization that is a Council on Podiatric Medical
25 Education approved board, an organization with equivalent
26 requirements approved by the California Board of Podiatric
27 Medicine, or an organization with a Council on Podiatric Medical
28 Education approved postgraduate training program that provides
29 training in podiatric medicine and podiatric surgery.

30 The California Board of Podiatric Medicine shall adopt
31 regulations to establish and collect a reasonable fee from each
32 board or association applying for recognition pursuant to this
33 subparagraph, to be deposited in the State Treasury in the Podiatry
34 Fund, pursuant to Section 2499. The fee shall not exceed the cost
35 of administering this subparagraph.

36 (6) A statement that the practitioner provides services under a
37 specified private or public insurance plan or health care plan.

38 (7) A statement of names of schools and postgraduate clinical
39 training programs from which the practitioner has graduated,
40 together with the degrees received.

1 (8) A statement of publications authored by the practitioner.

2 (9) A statement of teaching positions currently or formerly held
3 by the practitioner, together with pertinent dates.

4 (10) A statement of his or her affiliations with hospitals or
5 clinics.

6 (11) A statement of the charges or fees for services or
7 commodities offered by the practitioner.

8 (12) A statement that the practitioner regularly accepts
9 installment payments of fees.

10 (13) Otherwise lawful images of a practitioner, his or her
11 physical facilities, or of a commodity to be advertised.

12 (14) A statement of the manufacturer, designer, style, make,
13 trade name, brand name, color, size, or type of commodities
14 advertised.

15 (15) An advertisement of a registered dispensing optician may
16 include statements in addition to those specified in paragraphs (1)
17 to (14), inclusive, provided that any statement shall not violate
18 subdivision (a), (b), (c), or (e) or any other section of this code.

19 (16) A statement, or statements, providing public health
20 information encouraging preventative or corrective care.

21 (17) Any other item of factual information that is not false,
22 fraudulent, misleading, or likely to deceive.

23 (i) Each of the healing arts boards and examining committees
24 within Division 2 shall adopt appropriate regulations to enforce
25 this section in accordance with Chapter 3.5 (commencing with
26 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
27 Code.

28 Each of the healing arts boards and committees and examining
29 committees within Division 2 shall, by regulation, define those
30 efficacious services to be advertised by businesses or professions
31 under their jurisdiction for the purpose of determining whether
32 advertisements are false or misleading. Until a definition for that
33 service has been issued, no advertisement for that service shall be
34 disseminated. However, if a definition of a service has not been
35 issued by a board or committee within 120 days of receipt of a
36 request from a licensee, all those holding the license may advertise
37 the service. Those boards and committees shall adopt or modify
38 regulations defining what services may be advertised, the manner
39 in which defined services may be advertised, and restricting
40 advertising that would promote the inappropriate or excessive use

1 of health services or commodities. A board or committee shall not,
2 by regulation, unreasonably prevent truthful, nondeceptive price
3 or otherwise lawful forms of advertising of services or
4 commodities, by either outright prohibition or imposition of
5 onerous disclosure requirements. However, any member of a board
6 or committee acting in good faith in the adoption or enforcement
7 of any regulation shall be deemed to be acting as an agent of the
8 state.

9 (j) The Attorney General shall commence legal proceedings in
10 the appropriate forum to enjoin advertisements disseminated or
11 about to be disseminated in violation of this section and seek other
12 appropriate relief to enforce this section. Notwithstanding any
13 other provision of law, the costs of enforcing this section to the
14 respective licensing boards or committees may be awarded against
15 any licensee found to be in violation of any provision of this
16 section. This shall not diminish the power of district attorneys,
17 county counsels, or city attorneys pursuant to existing law to seek
18 appropriate relief.

19 (k) A physician and surgeon or doctor of podiatric medicine
20 licensed pursuant to Chapter 5 (commencing with Section 2000)
21 by the Medical Board of California who knowingly and
22 intentionally violates this section may be cited and assessed an
23 administrative fine not to exceed ten thousand dollars (\$10,000)
24 per event. Section 125.9 shall govern the issuance of this citation
25 and fine except that the fine limitations prescribed in paragraph
26 (3) of subdivision (b) of Section 125.9 shall not apply to a fine
27 under this subdivision.

28 SEC. 2. Section 1601.1 of the Business and Professions Code,
29 as added by Section 3 of Chapter 31 of the Statutes of 2008, is
30 repealed.

31 SEC. 3. Section 1601.1 of the Business and Professions Code,
32 as added by Section 1 of Chapter 35 of the Statutes of 2008, is
33 amended to read:

34 1601.1. (a) There shall be in the Department of Consumer
35 Affairs the Dental Board of California in which the administration
36 of this chapter is vested. The board shall consist of eight practicing
37 dentists and seven public members. Of the eight practicing dentists,
38 one shall be a member of a faculty of any California dental college,
39 and one shall be a dentist practicing in a nonprofit community
40 clinic. The appointing powers, described in Section 1603, may

1 appoint to the board a person who was a member of the prior board.
2 The board shall be organized into standing committees dealing
3 with examinations, enforcement, and other subjects as the board
4 deems appropriate.

5 (b) For purposes of this chapter, any reference in this chapter
6 to the Board of Dental Examiners shall be deemed to refer to the
7 Dental Board of California.

8 (c) The board shall have all authority previously vested in the
9 existing board under this chapter. The board may enforce all
10 disciplinary actions undertaken by the previous board.

11 (d) This section shall remain in effect only until January 1, 2016,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2016, deletes or extends that date.
14 Notwithstanding any other provision of law, the repeal of this
15 section renders the board subject to review by the appropriate
16 policy committees of the Legislature.

17 SEC. 4. Section 1602 of the Business and Professions Code is
18 amended to read:

19 1602. (a) All of the members of the board, except the public
20 members, shall have been actively and legally engaged in the
21 practice of dentistry in the State of California, for at least five years
22 next preceding the date of their appointment. The public members
23 shall not be licentiates of the board or of any other board under
24 this division or of any board referred to in Sections 1000 and 3600.
25 No more than one member of the board shall be a member of the
26 faculty of any dental college or dental department of any medical
27 college in the State of California. None of the members, including
28 the public members, shall have any financial interest in any such
29 college.

30 (b) This section shall remain in effect only until January 1, 2016,
31 and as of that date is repealed, unless a later enacted statute, that
32 is enacted before January 1, 2016, deletes or extends that date.

33 SEC. 5. Section 1603 of the Business and Professions Code is
34 amended to read:

35 1603. Except for the initial appointments, members of the board
36 shall be appointed for a term of four years, and each member shall
37 hold office until the appointment and qualification of his or her
38 successor or until one year shall have elapsed since the expiration
39 of the term for which he or she was appointed, whichever first
40 occurs.

1 A vacancy occurring during a term shall be filled by appointment
2 for the unexpired term, within 30 days after it occurs.

3 No person shall serve as a member of the board for more than
4 two terms.

5 The Governor shall appoint five of the public members and the
6 eight licensed dentist members of the board. The Senate Committee
7 on Rules and the Speaker of the Assembly shall each appoint a
8 public member.

9 Of the initial appointments, one of the dentist members and one
10 of the public members appointed by the Governor shall serve for
11 a term of one year. Two of the dentist members and two of the
12 public members appointed by the Governor shall each serve for a
13 term of two years. Two of the public members and two of the
14 dentist members appointed by the Governor shall each serve a
15 term of three years. The remaining three dentist members appointed
16 by the Governor shall each serve for a term of four years. The
17 public members appointed by the Senate Committee on Rules and
18 the Speaker of the Assembly shall each serve for a term of four
19 years.

20 This section shall remain in effect only until January 1, 2016,
21 and as of that date is repealed, unless a later enacted statute, that
22 is enacted before January 1, 2016, deletes or extends that date.

23 SEC. 6. Section 1611.3 is added to the Business and Professions
24 Code, to read:

25 1611.3. The board shall comply with the requirements of
26 Section 138 by January 1, 2013. The board shall require that the
27 notice under that section include a provision that the board is the
28 entity that regulates dentists and provide the telephone number
29 and Internet address of the board. The board shall require the notice
30 to be posted in a conspicuous location accessible to public view.

31 SEC. 7. Section 1616.5 of the Business and Professions Code,
32 as added by Section 5 of Chapter 31 of the Statutes of 2008, is
33 repealed.

34 SEC. 8. Section 1616.5 of the Business and Professions Code,
35 as amended by Section 3 of Chapter 33 of the Statutes of 2008, is
36 repealed.

37 SEC. 9. Section 1616.5 of the Business and Professions Code,
38 as added by Section 2 of Chapter 35 of the Statutes of 2008, is
39 amended to read:

1 1616.5. (a) The board, by and with the approval of the director,
2 may appoint a person exempt from civil service who shall be
3 designated as an executive officer and who shall exercise the
4 powers and perform the duties delegated by the board and vested
5 in him or her by this chapter.

6 (b) This section shall remain in effect only until January 1, 2016,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2016, deletes or extends that date.

9 SEC. 10. Section 1628.7 of the Business and Professions Code
10 is amended to read:

11 1628.7. (a) The board may, upon an applicant's successful
12 completion of the board examination, in its sole discretion, issue
13 a probationary license to an applicant for licensure as a dentist or
14 dental auxiliary. The board may require, as a term or condition of
15 issuing the probationary license, the applicant to do any of the
16 following, including, but not limited to:

17 (1) Successfully complete a professional competency
18 examination.

19 (2) Submit to a medical or psychological evaluation.

20 (3) Submit to continuing medical or psychological treatment.

21 (4) Abstain from the use of alcohol or drugs.

22 (5) Submit to random fluid testing for alcohol or controlled
23 substance abuse.

24 (6) Submit to continuing participation in a board approved
25 rehabilitation program.

26 (7) Restrict the type or circumstances of practice.

27 (8) Submit to continuing education and coursework.

28 (9) Comply with requirements regarding notification to employer
29 and changes of employment.

30 (10) Comply with probation monitoring.

31 (11) Comply with all laws and regulations governing the practice
32 of dentistry.

33 (12) Limit practice to a supervised structured environment in
34 which the licensee's activities shall be supervised by another
35 dentist.

36 (13) Submit to total or partial restrictions on drug prescribing
37 privileges.

38 (b) The probation shall be for three years and the licensee may
39 petition the board for early termination, or modification of a

1 condition of, the probation in accordance with subdivision (b) of
2 Section 1686.

3 (c) The proceeding under this section shall be conducted in
4 accordance with the provisions of Chapter 5 (commencing with
5 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
6 Code, and the board shall have all the powers granted therein.

7 (d) The board shall adopt written guidelines on how to make
8 probation assignments and shall ensure that probationary and
9 evaluation reports are conducted consistently and regularly.

10 SEC. 11. Section 1632 of the Business and Professions Code
11 is amended to read:

12 1632. (a) The board shall require each applicant to successfully
13 complete the Part I and Part II written examinations of the National
14 Board Dental Examination of the Joint Commission on National
15 Dental Examinations.

16 (b) The board shall require each applicant to successfully
17 complete an examination in California law and ethics developed
18 and administered by the board. The board shall provide a separate
19 application for this examination. The board shall ensure that the
20 law and ethics examination reflects current law and regulations,
21 and ensure that the examinations are randomized. Applicants shall
22 submit this application and required fee to the board in order to
23 take this examination. In addition to the aforementioned
24 application, the only other requirement for taking this examination
25 shall be certification from the dean of the qualifying dental school
26 attended by the applicant that the applicant has graduated, or will
27 graduate, or is expected to graduate. Applicants who submit
28 completed applications and certification from the dean at least 15
29 days prior to a scheduled examination shall be scheduled to take
30 the examination. Successful results of the examination shall, as
31 established by board regulation, remain valid for two years from
32 the date that the applicant is notified of having passed the
33 examination.

34 (c) Except as otherwise provided in Section 1632.5, the board
35 shall require each applicant to have taken and received a passing
36 score on one of the following:

37 (1) A portfolio examination of the applicant's competence to
38 enter the practice of dentistry. This examination shall be conducted
39 while the applicant is enrolled in a dental school program at a
40 board-approved school located in California. This examination

1 shall utilize uniform standards of clinical experiences and
2 competencies, as approved by the board pursuant to Section 1632.1.
3 The applicant shall pass a final assessment of the submitted
4 portfolio at the end of his or her dental school program. Before
5 any portfolio assessment may be submitted to the board, the
6 applicant shall remit to the board a three hundred fifty dollar (\$350)
7 fee, to be deposited into the State Dentistry Fund, and a letter of
8 good standing signed by the dean of his or her dental school or his
9 or her delegate stating that the applicant has graduated or will
10 graduate with no pending ethical issues.

11 (A) The portfolio examination shall not be conducted until the
12 board adopts regulations to carry out this paragraph. The board
13 shall post notice on its Internet Web site when these regulations
14 have been adopted.

15 (B) The board shall also provide written notice to the Legislature
16 and the Legislative Counsel when these regulations have been
17 adopted.

18 (2) A clinical and written examination administered by the
19 Western Regional Examining Board, which board shall determine
20 the passing score for that examination.

21 (d) Notwithstanding subdivision (b) of Section 1628, the board
22 is authorized to do either of the following:

23 (1) Approve an application for examination from, and to
24 examine an applicant who is enrolled in, but has not yet graduated
25 from, a reputable dental school approved by the board.

26 (2) Accept the results of an examination described in paragraph
27 (2) of subdivision (c) submitted by an applicant who was enrolled
28 in, but had not graduated from, a reputable dental school approved
29 by the board at the time the examination was administered.

30 In either case, the board shall require the dean of that school or
31 his or her delegate to furnish satisfactory proof that the applicant
32 will graduate within one year of the date the examination was
33 administered or as provided in paragraph (1) of subdivision (c).

34 ~~SEC. 12. Section 1695 of the Business and Professions Code~~
35 ~~is amended to read:~~

36 ~~1695. (a) It is the intent of the Legislature that the Board of~~
37 ~~Dental Examiners of California seek ways and means to identify~~
38 ~~and rehabilitate licentiates whose competency may be impaired~~
39 ~~due to abuse of dangerous drugs or alcohol, so that licentiates so~~
40 ~~afflicted may be treated and returned to the practice of dentistry~~

1 in a manner which will not endanger the public health and safety.
2 It is also the intent of the Legislature that the Board of Dental
3 Examiners of California shall implement this legislation in part
4 by establishing a diversion program as a voluntary alternative
5 approach to traditional disciplinary actions.

6 (b) ~~If requested by the Legislature through the Joint Legislative~~
7 ~~Audit Committee in 2012, the Bureau of State Audits shall conduct~~
8 ~~a thorough performance audit of the board's diversion program to~~
9 ~~evaluate the effectiveness and efficiency of the program, and make~~
10 ~~recommendations regarding the continuation of the program and~~
11 ~~any changes or reforms required to ensure that licensees~~
12 ~~participating in the program are appropriately monitored and that~~
13 ~~the public is protected from licensees who are impaired due to~~
14 ~~alcohol or drug abuse or mental or physical illness. The audit shall~~
15 ~~be completed by January 1, 2013. The board and its staff shall~~
16 ~~cooperate with the audit, and the board shall provide data,~~
17 ~~information, and case files as requested by the auditor to perform~~
18 ~~all of its duties. The provision of confidential data, information,~~
19 ~~and case files by the board to the auditor shall not constitute a~~
20 ~~waiver of any exemption from disclosure or discovery or of any~~
21 ~~confidentiality protection or privilege otherwise provided by law~~
22 ~~that is applicable to the data, information, or case files.~~

23 (c) ~~The audit performed in subdivision (b) shall be paid for with~~
24 ~~moneys from the State Dentistry Fund.~~

25 ~~SEC. 13.~~

26 *SEC. 12.* Section 1695.5 of the Business and Professions Code
27 is amended to read:

28 1695.5. (a) The board shall establish criteria for the acceptance,
29 denial, or termination of licentiates in a diversion program. Unless
30 ordered by the board as a condition of licentiate disciplinary
31 probation, only those licentiates who have voluntarily requested
32 diversion treatment and supervision by a committee shall
33 participate in a diversion program.

34 (b) A licentiate who is not the subject of a current investigation
35 may self-refer to the diversion program on a confidential basis,
36 except as provided in subdivision (f).

37 (c) A licentiate under current investigation by the board may
38 also request entry into the diversion program by contacting the
39 board's Diversion Program Manager. The Diversion Program
40 Manager may refer the licentiate requesting participation in the

1 program to a diversion evaluation committee for evaluation of
2 eligibility. Prior to authorizing a licentiate to enter into the
3 diversion program, the Diversion Program Manager may require
4 the licentiate, while under current investigation for any violations
5 of the Dental Practice Act or other violations, to execute a
6 statement of understanding that states that the licentiate understands
7 that his or her violations of the Dental Practice Act or other statutes
8 that would otherwise be the basis for discipline, may still be
9 investigated and the subject of disciplinary action.

10 (d) If the reasons for a current investigation of a licentiate are
11 based primarily on the self-administration of any controlled
12 substance or dangerous drugs or alcohol under Section 1681 of
13 the Business and Professions Code, or the illegal possession,
14 prescription, or nonviolent procurement of any controlled substance
15 or dangerous drugs for self-administration that does not involve
16 actual, direct harm to the public, the board shall close the
17 investigation without further action if the licentiate is accepted
18 into the board's diversion program and successfully completes the
19 requirements of the program. If the licentiate withdraws or is
20 terminated from the program by a diversion evaluation committee,
21 and the termination is approved by the program manager, the
22 investigation shall be reopened and disciplinary action imposed,
23 if warranted, as determined by the board.

24 (e) Neither acceptance nor participation in the diversion program
25 shall preclude the board from investigating or continuing to
26 investigate, or taking disciplinary action or continuing to take
27 disciplinary action against, any licentiate for any unprofessional
28 conduct committed before, during, or after participation in the
29 diversion program.

30 (f) If a licentiate withdraws or is terminated from the diversion
31 program for failure to comply or is determined to be a threat to
32 the public or his or her own health and safety, all diversion records
33 for that licentiate shall be provided to the board's enforcement
34 program and may be used in any disciplinary proceeding. If a
35 licentiate in a diversion program tests positive for any banned
36 substance, the board's diversion program manager shall
37 immediately notify the board's enforcement program and provide
38 the documentation evidencing the positive test result to the
39 enforcement program. This documentation may be used in a
40 disciplinary proceeding.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

~~SEC. 14.~~

SEC. 13. Section 1725 of the Business and Professions Code is amended to read:

1725. The amount of the fees prescribed by this chapter that relate to the licensing and permitting of dental assistants shall be established by regulation and subject to the following limitations:

(a) The application fee for an original license shall not exceed twenty dollars (\$20). On and after January 1, 2010, the application fee for an original license shall not exceed fifty dollars (\$50).

(b) The fee for examination for licensure as a registered dental assistant shall not exceed fifty dollars (\$50) for the written examination and shall not exceed sixty dollars (\$60) for the practical examination.

(c) The fee for application and for the issuance of an orthodontic assistant permit or a dental sedation assistant permit shall not exceed fifty dollars (\$50).

(d) The fee for the written examination for an orthodontic assistant permit or a dental sedation assistant permit shall not exceed the actual cost of the examination.

(e) The fee for the written examination in law and ethics for a registered dental assistant shall not exceed the actual cost of the examination.

(f) The fee for examination for licensure as a registered dental assistant in extended functions shall not exceed the actual cost of the examination.

(g) The fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(h) For third- and fourth-year dental students, the fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

1 (i) The fee for examination for licensure as a registered dental
2 hygienist in extended functions shall not exceed the actual cost of
3 the examination.

4 (j) The board shall establish the fee at an amount not to exceed
5 the actual cost for licensure as a registered dental hygienist in
6 alternative practice.

7 (k) The biennial renewal fee for a registered dental assistant
8 whose license expires on or after January 1, 1991, shall not exceed
9 sixty dollars (\$60). On or after January 1, 1992, the board may set
10 the renewal fee for a registered dental assistant license, registered
11 dental assistant in extended functions license, dental sedation
12 assistant permit, or orthodontic assistant permit in an amount not
13 to exceed eighty dollars (\$80).

14 (l) The delinquency fee shall not exceed twenty-five dollars
15 (\$25) or one-half of the renewal fee, whichever is greater. Any
16 delinquent license or permit may be restored only upon payment
17 of all fees, including the delinquency fee.

18 (m) The fee for issuance of a duplicate registration, license,
19 permit, or certificate to replace one that is lost or destroyed, or in
20 the event of a name change, shall not exceed twenty-five dollars
21 (\$25).

22 (n) The fee for each curriculum review and site evaluation for
23 educational programs for registered dental assistants that are not
24 accredited by a board-approved agency, or the Chancellor's office
25 of the California Community Colleges shall not exceed one
26 thousand four hundred dollars (\$1,400).

27 (o) The fee for review of each approval application for a course
28 that is not accredited by a board-approved agency, or the
29 Chancellor's office of the California Community Colleges shall
30 not exceed three hundred dollars (\$300).

31 (p) No fees or charges other than those listed in subdivisions
32 (a) to (o), inclusive, above shall be levied by the board in
33 connection with the licensure or permitting of dental assistants,
34 registered dental assistant educational program site evaluations
35 and course evaluations pursuant to this chapter.

36 (q) Fees fixed by the board pursuant to this section shall not be
37 subject to the approval of the Office of Administrative Law.

38 (r) Fees collected pursuant to this section shall be deposited in
39 the State Dental Assistant Fund.

1 ~~SEC. 15.~~

2 ~~SEC. 14.~~ Section 1742 of the Business and Professions Code
3 is repealed.

4 ~~SEC. 16.~~

5 ~~SEC. 15.~~ Section 1742 is added to the Business and Professions
6 Code, to read:

7 1742. (a) There is hereby created a Dental Assisting Council
8 of the Dental Board of California, which shall consider all matters
9 relating to dental assistants in this state and make appropriate
10 recommendations to the board, including, but not limited to, the
11 following areas:

12 (1) Requirements for dental assistant examination, licensure,
13 and renewal.

14 (2) Standards for approval of dental assisting educational
15 programs and courses.

16 (3) Allowable dental assistant duties, settings, and supervision
17 levels.

18 (4) Appropriate standards of conduct and enforcement for dental
19 assistants.

20 (b) The members of the council shall be appointed by the board
21 president, and shall consist of two members of the board and five
22 members who are either registered dental assistants or registered
23 dental assistants in extended functions. Each member shall meet
24 the qualifications specified in Section 1602.

25 (c) The council shall meet in conjunction with other board
26 committees, and at other times as deemed necessary.

27 (d) Each member shall serve for a term of four years, except
28 that, of the initial appointments of the nonboard members, one of
29 the members shall serve a term of one year, two members shall
30 serve a term of two years, and two members serve a term of three
31 years.

32 (e) The council shall be the sole entity of the board that will
33 provide recommendations to the board on dental assisting matters.

34 ~~SEC. 17.~~

35 ~~SEC. 16.~~ Section 1752.3 of the Business and Professions Code
36 is amended to read:

37 1752.3. (a) On and after January 1, 2010, the written
38 examination for registered dental assistant licensure required by
39 Section 1752.1 shall comply with Section 139.

(b) On and after January 1, 2010, the practical examination for registered dental assistant licensure required by Section 1752.1 shall consist of three of the procedures described in paragraphs (1) to (4), inclusive. The specific procedures shall be assigned by the board, after considering recommendations of its Dental Assisting Council, and shall be graded by examiners appointed by the board. The procedures shall be performed on a fully articulated maxillary and mandibular typodont secured with a bench clamp. Each applicant shall furnish the required materials necessary to complete the examination.

(1) Place a base or liner.

(2) Place, adjust, and finish a direct provisional restoration.

(3) Fabricate and adjust an indirect provisional restoration.

(4) Cement an indirect provisional restoration.

~~SEC. 18.~~

SEC. 17. Section 1753.4 of the Business and Professions Code is amended to read:

1753.4. On and after January 1, 2010, each applicant for licensure as a registered dental assistant in extended functions shall successfully complete an examination consisting of the procedures described in subdivisions (a) and (b). On and after January 1, 2010, each person who holds a current and active registered dental assistant in extended functions license issued prior to January 1, 2010, who wishes to perform the duties specified in paragraphs (1), (2), (5), and (7) to (11), inclusive, of subdivision (b) of Section 1753.5, shall successfully complete an examination consisting of the procedures described in subdivision (b). The specific procedures shall be assigned by the board, after considering recommendations of its Dental Assisting Council, and shall be graded by examiners appointed by the board. Each applicant shall furnish the required materials necessary to complete the examination.

(a) Successful completion of the following two procedures on a patient provided by the applicant. The prepared tooth, prior to preparation, shall have had mesial and distal contact. The preparation performed shall have margins at or below the free gingival crest and shall be one of the following: $\frac{7}{8}$ crown, $\frac{3}{4}$ crown, or full crown, including porcelain fused to metal. Alginate impression materials alone shall not be acceptable:

(1) Cord retraction of gingiva for impression procedures.

(2) Take a final impression for a permanent indirect restoration.

(b) Successful completion of two of the following procedures on a simulated patient head mounted in appropriate position and accommodating an articulated typodont in an enclosed intraoral environment, or mounted on a dental chair in a dental operatory:

(1) Place, condense, and carve an amalgam restoration.

(2) Place and contour a nonmetallic direct restoration.

(3) Polish and contour an existing amalgam restoration.

~~SEC. 19.~~

SEC. 18. Section 1973 of the Business and Professions Code is amended to read:

1973. (a) The Dentally Underserved Account is hereby created in the State Dentistry Fund.

(b) The sum of three million dollars (\$3,000,000) is hereby authorized to be expended from the State Dentistry Fund on this program. These moneys are appropriated as follows:

(1) One million dollars (\$1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2003. Of this amount, sixty-five thousand dollars (\$65,000) shall be used by the Dental Board of California in the 2003–04 fiscal year for operating expenses necessary to manage this program.

(2) One million dollars (\$1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2004. Of this amount, sixty-five thousand dollars (\$65,000) shall be used by the Dental Board of California in the 2004–05 fiscal year for operating expenses necessary to manage this program.

(3) One million dollars (\$1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2005. Of this amount, sixty-five thousand dollars (\$65,000) shall be used by the Dental Board of California in the 2005–06 fiscal year for operating expenses necessary to manage this program.

(c) Funds placed into the Dentally Underserved Account shall be used by the board to repay the loans per agreements made with dentists.

(1) Funds paid out for loan repayment may have a funding match from foundation or other private sources.

(2) Loan repayments may not exceed one hundred five thousand dollars (\$105,000) per individual licensed dentist.

1 (3) Loan repayments may not exceed the amount of the
2 educational loans incurred by the dentist applicant.

3 (d) Notwithstanding Section 11005 of the Government Code,
4 the board may seek and receive matching funds from foundations
5 and private sources to be placed into the Dentally Underserved
6 Account. The board also may contract with an exempt foundation
7 for the receipt of matching funds to be transferred to the Dentally
8 Underserved Account for use by this program.

9 (e) Funds in the Dentally Underserved Account appropriated
10 in subdivision (b) or received pursuant to subdivision (d) are
11 continuously appropriated for the repayment of loans per
12 agreements made between the board and the dentists.

13 (f) On or after July 1, 2010, the board shall extend the California
14 Dental Corps Loan Repayment Program of 2002 and distribute
15 the money remaining in the account until all the moneys in the
16 account are expended. Regulations that were adopted by the board
17 for the purposes of the program shall apply.